

Editor's note: Reconsideration denied by orders dated Feb. 28, 1975, June 2, 1978 and Feb. 10, 1984; Appealed -- aff'd, Civ.No. 73-747-RF (C.D. Calif.)

GEORGE RODDA, JR.

IBLA 70-151

Decided August 16, 1972

Appeal from decision (ES 6781) by the Director, Bureau of Land Management, rejecting application for cash payment in satisfaction of soldiers' additional homestead rights.

Affirmed.

Soldiers' Additional Homesteads: Generally

A soldier's additional homestead application will be rejected when the applicant cannot establish the identity of the serviceman and the original entryman as the same person.

APPEARANCES: George Rodda, Jr., pro se.

OPINION BY MR. RITVO

This is an appeal by George Rodda, Jr., from a decision dated March 18, 1970, whereby the Director, Bureau of Land Management, rejected the appellant's application for cash payment in satisfaction of soldiers' additional homestead rights.

The sole consideration on appeal is the right to a cash payment based on 40 acres of the alleged additional homestead right of Charles Seidel under 43 U.S.C. §§ 274, 278 (1970). The alleged right, which Rodda holds by assignment, was recorded September 18, 1956, in accordance with the Act of August 5, 1955, 69 Stat. 534. To establish a right to a cash payment it must be shown that an eligible discharged soldier who served in the Civil War made an entry of less than 160 acres under the homestead law. From the records it is established that a Charles Seidel served in Company "E", 6th Regiment, Minnesota Infantry, from July 9, 1862, to July 9, 1865, and that a Charles Seidel made homestead entry No. 2621 at St. Peters, Minnesota, on November 21, 1865. The issue in the case is whether the entryman and the soldier were the same person.

The Director of the Bureau of Land Management rejected Rodda's application primarily because the signature of the soldier Charles

Seidel on a company roll and the signature on the homestead application were dissimilar in many respects 1/. It was also noted by the Director that there was alleged to be another Charles Seidel living in Minnesota when the entry was made. The Director referred to a decision dated May 19, 1933, in which the Acting Assistant Commissioner, General Land Office, held for rejection an application for soldiers' additional rights based on the same Seidel right for failure of the applicant to establish that the entryman and the soldier were one and the same person. The 1933 decision stated:

The alleged Seidel right is based on the service of Charles Seidel in Company "E", 6th Regiment, Minnesota Infantry, from July 9, 1862 to July 9, 1865, and is further based on H.E. 2621, St. Peter series, made November 21, 1865, by one Charles Seidel, for W 1/2 SW 1/4 sec. 23, T. 110 N., R. 12 W., in Wabasha County, Minnesota, which was cancelled January 22, 1872, by reason of relinquishment. * * *

With the papers mentioned there was filed an uncertified copy of an affidavit by Charles Seidel, alleged nephew of the soldier, dated June 16, 1930, in which he stated that his mother, Caroline Seidel, was a sister of Charles Seidel, the soldier, and the affiant's father was also named Charles Seidel; that the soldier came to this country from Germany before the Civil War; that he performed the services and made the homestead entry above described; and that he died the year following the making of the entry; that affiant's father, Charles Seidel, lived on 40 acres but a short distance from said homestead entry. He further alleges as follows:

We lived in Wabasha County, Minnesota, after first coming to this country. In the fall of 1884, we moved from Wabasha County, Minnesota, to Taylor County, Wisconsin, where we have lived ever since. The above information is in accordance with all the information I have received from my father and mother and is a matter of family history.

1/ The record pertaining to the military record of Charles Seidel from which the tracing was made apparently has been destroyed by the National Archives.

It does not appear that the affiant, Charles Seidel, the nephew of the soldier, had any first-hand information of any facts showing that the soldier was the identical person who made the entry. Furthermore, a comparison of the signatures of the homestead entryman, to his homestead affidavit and application made in 1865, with the signature of the soldier to the "Co. roll May and June, 1864", a tracing of which has been obtained and is with the record, is unfavorable. While the characteristic German handwriting is exhibited in both, the signatures of the soldier and those of the homestead entryman are dissimilar in many respects. It is also noted that it is alleged that there was another Charles Seidel, the soldier's brother-in-law, living in Wabasha County, Minnesota, at the time the entry was made. * * *

Under the circumstances the applicant will be allowed 30 days from notice within which to file additional evidence establishing the identity of the soldier, Charles Seidel, as the person who made the entry alleged as a basis for his claimed right. * * *

When another attempt to use the Seidel rights was met with a request to submit additional evidence the applicant substituted other rights and requested the return of the Seidel papers. Jule L. Vermeersch, Phoenix 081309 (BLM June 10, 1949).

Subsequently Rodda submitted to the Bureau of Land Management an affidavit and a letter by David A. Black, examiner of questioned documents, a private expert, who compared the two signatures of Charles Seidel. Black stated that in his opinion the person who wrote the original signature on the two documents was one and the same person. 2/ The Director found that despite Black's affidavit the signatures were dissimilar in many respects and held that the validity of the claim was not established.

In this appeal Rodda has submitted additional evidence that Charles Seidel who signed the homestead application was the same person as the Charles Seidel who signed the company roll. This evidence relates mainly to the probate of the estate of the Charles Seidel who was the entryman of H.E. No. 2621. It does not establish a relationship between the entryman and the soldier. The main issue

2/ Despite this affidavit, Rodda, in his appeal brief, suggests that the signature on the company roll may have been signed by someone other than the soldier Seidel.

remains the comparison of the two signatures. The applicant has not submitted additional evidence that the signatures were written by the same person. We have submitted the tracing of the signature on the company roll and the signature on the original homestead application to the Federal Bureau of Investigation. It has advised us that based on the assumption that the tracing is an accurate representation, there are no similarities in the two signatures, and that they were not written by the same person. It did not detect any similarities at all. Thus although the applicant has presented some prima facie evidence of the identity of the soldier and the entryman, the other evidence rebuts it. Accordingly the application must be rejected. Eugene Symons Eldridge, A-29352 November 4, 1963. George A. Evans, A-30987 (October 16, 1968), is not to the contrary. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5 35 F.R. 12081), the decision appealed from is affirmed.

Martin Ritvo
Member

We concur:

Joan B. Thompson
Member

Edward W. Stuebing
Member

3/ There the F.B.I. reported that it could not render a definite opinion whether the two signatures compared were written by the same person but said that there were indications that they were. In the absence of any affirmative evidence that the entryman and soldier were different persons, it was concluded that they were the same person.

